

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1346 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

B V GAMIT

Versus

STATE OF GUJARAT

Appearance:

MR SHALIN MEHTA FOR MR. GIRISH PATEL for Petitioners
MS. H.B. PUNANI for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 09/04/99

ORAL JUDGEMENT

The petitioners seek a direction that they were all eligible for being promoted to the post of Under Secretary in the year 1981 on the basis of the application of reservation and roster and that they should have been included in the unconditional list of Section Officers of 1981 and promoted as Under Secretaries with effect from 1981 with consequential

benefits.

These petitioners were appointed as Assistants in the year 1974-75 in the Secretariat. They became Section Officers in July 1980. According to them they were Scheduled Tribe candidates and since in the year 1981 there were many vacancies, they ought to have been put in the unconditional list of Section Officers after completion of one year on the basis of their provisional promotions. According to them their non-inclusion in the unconditional select list after completion of one year's service as Section Officers was contrary to the existing orders, arbitrary and violative of their fundamental rights guaranteed by Article 14 of the Constitution of India.

The learned counsel appearing for the petitioners places heavy reliance on the Circular dated 20.8.1971 which is at Annexure-A to this petition in support of his contention that these petitioners ought to have been placed in the unconditional list in the year 1981. As per the said Circular the candidates who had been selected for higher post were required to be kept in a provisional select list and it is only after their performance in the post of promotion was found to be satisfactory for a period of one year that they were required to be placed in the unconditional select list. The Circular would obviously apply when there is a regular selection as per the rules to the posts in question. It cannot apply to temporary and adhoc promotions. In the affidavit in reply in this context it is stated that when direct recruits were not readily available and the administrative exigencies so demanded qualified assistants were provisionally promoted as Section Officers in excess of their quota. If such provisionally promoted Section Officers were to be placed in unconditional select list that would create an anomalous situation when regular recruits were available. It is obvious that when provisional promotion is given to answer the exigencies of service which promotion is in excess of the quota prescribed under the rules, such promotion cannot be described as a regular promotion and would not give any right to the incumbent to be included in the unconditional select list on the basis of such temporary arrangement. There is therefore no substance in the claim of the petitioners that they ought to have been placed in the unconditional select list of Section Officers from 1981 and on that basis should have been given their promotion to the higher posts of Under Secretary.

It is brought on record in the affidavit in reply filed by the respondent that the Assistants who were provisionally promoted as Section Officers in September 1978 could be brought on the unconditional select list only in March 1982 and those who were promoted provisionally as Section Officers in September 1979 could be included in the unconditional select list only in December 1983. It is stated that in the period between March 1982 and December 1983 no other unconditional select list of Section Officers was prepared and that the names of the petitioners were included in the unconditional list of 1983. Since the petitioners' names could not be included in the unconditional select list in 1981 in view of their provisional nature of promotion as Section Officers, there was no question of considering them for promotion to the posts of under Secretary in the year 1981.

As regards the petitioners' claim that there were many vacancies available for Scheduled Tribe candidates, the respondents in their affidavit in reply have given the relevant facts in paragraph 9 thereof stating that in 1980 five roster points were reserved for Scheduled Tribe candidates but not a single one was available from the feeder cadre for promotion to the post of Under Secretary. In 1981, 1982 and 1983, five, three and six roster points were reserved for Scheduled Tribe candidates but only one, two and two Scheduled Tribe candidates were available in the respective years for promotion to the post of Under Secretary. Non-availability of Section Officers belonging to Scheduled Tribe at the relevant time necessitated carry forward of unutilised roster points in accordance with general instructions of the Government in that regard.

The petitioners have therefore failed to establish infringement of any of their rights, as they were not entitled to be placed in the unconditional list of Section Officers since 1981 as claimed by them. The petition is therefore misconceived and is rejected. Rule discharged with no order as to costs.

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